

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD W. REYNOLDS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-cv-00069-PLM-
)	PJG
GREG TALBERG, et al.,)	
)	Hon. Paul L. Maloney
Defendants,)	
)	
WILLIAMSTON HIGH)	
SCHOOL GAY-STRAIGHT)	
ALLIANCE,)	
an unincorporated association,)	
)	
Intervenor-Defendant.)	
)	

NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF INTERVENOR-DEFENDANT’S MOTION TO DISMISS

Intervenor-Defendant Williamston High School Gay-Straight Alliance (“Intervenor-Defendant”) files this Notice of Supplemental Authority to call the Court’s attention to the recent decision in *Parents for Privacy v. Barr*, __ F.3d __, No. 18-35708, 2020 U.S. App. LEXIS 4503 (9th Cir. Feb. 12, 2020), which is pertinent to Intervenor-Defendant’s unopposed Motion to Dismiss [Docket No. 11].¹ A copy of the decision is attached hereto as Exhibit 1.

¹ On March 21, 2018, the Court granted in part Plaintiffs’ motion for an extension of time, ordering “that if intervention is granted, Plaintiffs will be

In *Parents for Privacy*, plaintiffs filed suit against a school district under similar circumstances to the current case before this court, alleging their rights had been violated under Title IX, the Fourteenth Amendment, the First Amendment and Oregon state law by a school policy allowing transgender students to use restroom and locker room facilities consistent with their gender identity. The district court dismissed plaintiffs' complaint with prejudice for failure to state a claim on which relief could be granted. Plaintiffs appealed the dismissal of their federal causes of action.

In a unanimous ruling, the Ninth Circuit affirmed the district court's "thorough and well-reasoned opinion" dismissing plaintiffs' claims with prejudice. The Ninth Circuit concurred with the district court and found that the school district's carefully-crafted policy sought to avoid discrimination and ensure the safety and well-being of transgender students. Specific to plaintiffs' claims, the Ninth Circuit found that "[a] policy that allows transgender students to use school bathroom and locker room facilities that match their self-identified gender in the same manner that cisgender students utilize those facilities does not infringe

granted an additional 28 days to file their response to [Intervenor-Defendant's] motion to dismiss (ECF No. 11)." *See* Docket No. 15. On July 12, 2019, the Court granted Intervenor-Defendant's motion to intervene as a defendant in this matter. Docket No. 27. More than 28 days has elapsed, and Plaintiffs have not filed a response to Intervenor-Defendant's motion to dismiss.

Fourteenth Amendment privacy or parental rights or First Amendment free exercise rights, nor does it create actionable sex harassment under Title IX.” *Id.* at *62.

Moreover, because plaintiffs’ legal theories failed, amendment of their complaint would be futile. The Ninth Circuit therefore also affirmed the district court’s denial of leave to appeal.

This decision is persuasive authority that this Court should grant Intervenor-Defendant’s motion to dismiss Plaintiffs’ Title IX, First and Fourteenth Amendment claims for failure to state a claim.

Respectfully submitted,

Jay D. Kaplan (P38197)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6812
jkaplan@aclumich.org
dkorobkin@aclumich.org

John A. Knight*
American Civil Liberties Union
Foundation
150 North Michigan Avenue
Suite 600
Chicago, IL 60601
(312) 201-9740
jaknight@aclu.org

/s/ Deborah Kovsky-Apap
Deborah Kovsky-Apap (P68258)
Matthew Lund (P48632)
Pepper Hamilton LLP
4000 Town Center
Suite 1800
Southfield, MI 48075
(248) 359-7300
kovskyd@pepperlaw.com
lundm@pepperlaw.com

Counsel for Defendant-Intervenor

** Application for admission forthcoming*

Dated: March 9, 2020

